Derry v. Peek (1889, H. L.) 14 A. C. 337. However, if made recklessly it is equivalent to the requisite *scienter*. *Miller v. John* (1904) 208 Ill. 173, 70 N. E. 27. By the weight of authority an innocent principal is liable in deceit for the misrepresentations of his agent. *Barwick v. Joint Stock Bank* (1867) L. R. 2 Exch. 259; 2 Mechem, *Agency* (2d ed. 1914) sec. 1995. This, however, is not an abandonment of the requirement of moral turpitude in the facts constituting the tort, but rather a necessary incident of the doctrine of *respondeat superior* in allocating responsibility. In equity the term "fraud" is made susceptible of wider application. A person will not be allowed to retain the fruits of a bargain induced by his innocent misrepresentation. *Helvetia Copper Co. v. Hart Parr Co.* (1917) 137 Minn. 321, 163 N. W. 665; 3 Williston, *Contracts* (1920) sec. 1500. Equity seeks to relieve from an unjust enrichment and an actual misrepresentation is the essential operative fact, so the term "equitable fraud" may perhaps be condoned. Again, although an actual intent to defraud is necessary to invalidate a will, yet if there is an unjust enrichment because of the repudiation of a parol promise on the part of the devisee or legatee, though he had no fraudulent intent at the outset, a constructive trust exists in favor of intended beneficiaries. Rood, *Wills* (1904) sec. 171; *In re Everts Estate* (1912) 163 Calif. 449, 125 Pac. 1058; Gifford, *Will or No Will?* (1920) 20 COL. L. REV. 862. A large class of cases is embraced in the loose term "constructive fraud." Where the consideration for a contract is so inadequate as to shock the conscience, or where one of the parties is mentally weak or laboring under necessity or pecuniary distress, the court is said to presume fraud in fact, and equity will set aside the transaction. Pomeroy, *Equity Jurisprudence* (4th ed. 1918) sec. 927; *Herzog v. Gipson* (1916) 170 Ky. 325, 185 S. W. 1119. But proof of good faith is a defense. *Grimminger v. Alderton* (1915) 85 N. J. Eq. 425, 96 Atl. 80. A breach of a fiduciary relation by failure to make full disclosure is said to be "constructive fraud": for example, a conveyance of trust property by a trustee to himself without knowledge or consent of the *cestui que trust* is always voidable. *Linsley v. Strang* (1910) 149 Iowa, 690, 126 N. W. 941. But, wherever applied, the term "constructive fraud" is purely a fiction and is only confusing. Smith, *Surviving Fictions* (1917) 27 YALE LAW JOURNAL, 317, 319; *cf. Nocton v. Lord Ashburton* [1914, H. L.] A. C. 932; (1915) 31 L. QUART. REV. 93. In view of the variety of meanings which courts attach to the term "fraud," just what was intended by the legislature in the instant case becomes a matter of conjecture. On grounds of policy it seems that, unless the debtor is a non-resident, the drastic remedy of attachment ought to be confined to cases of actual *mala fides*. It is in reality an added security necessary where there is a suspicion that the debtor will prevent satisfaction of the judgment by concealing his assets. Wade, *Attachments* (1887) sec. 8. In the instant case there was sufficient evidence from both the contract and the custom of the business to warrant a belief by the defendant that his act was privileged, but in the view of the court "it was not essential to the validity of the attachment that any fraud or intention to defraud at the time should have existed." This is opposed to the great weight of authority and is objectionable in its inaccurate interpretation of an important legal concept. 30 L. R. A. 465, note; Wade, *op cit.* sec. 98.

BANKRUPTCY—EXEMPT CLASSES—CLASSIFICATION GOVERNED BY OCCUPATION AT DATE OF ACT OF BANKRUPTCY.—The defendant was engaged chiefly in farming both at the time when an involuntary petition was filed and when the act of bankruptcy was committed. When the debts were incurred, however, he was a cashier of a bank as well as a farmer. *Held,* that the occupation at the time of committing the alleged act of bankruptcy was decisive, and that the defendant could not be adjudicated a bankrupt. *In re Beiseker & Martin* (1921, D. Mont.) 277 Fed. 1010.

Section 4(b) of the Bankruptcy Act provides that "any natural person except a wage-earner or a person engaged chiefly in farming or the tillage of the soil . . . . shall be subject to the provisions . . . . of this Act." Act of July 1, 1898 (30 Stat. at L. 547). The statute is silent as to the point of time which shall determine the debtor's occupational status, and as a result the courts have reached three different conclusions. The first is that the occupation of the debtor at the time of the filing of the petition governs. *In re Matson* (1903, M. D. Pa.) 123 Fed. 743; *Hoffschlaeger Co. Ltd. v. Young Nap* (1904, U. S. D. C. Hawaii) 12 Am. Bankr. Cas. 521. This follows a literal interpretation of the statute, and adopts the general federal rule as to jurisdiction. See Bankruptcy Act, sec. 1 (10), *supra; Mollan v. Torrance* (1824, U. S.) 9 Wheat. 537, 2 Rose's Notes, 80. It is impractical, however, as it allows a debtor to defeat the purpose of the Act by changing from a non-exempt to an exempt occupation prior to the date of the petition. See *In re Disney* (1915, D. Md.) 219 Fed. 294. Another test makes the time of the act of bankruptcy the material date. *In re Luchhardt* (1900, D. Kan.) 101 Fed. 807; *In re Folkstad* (1912, D. Mont.) 199 Fed. 363; *Harris v. Tapp* (1916, S. D. Ga.) 235 Fed. 1918. This construction renders a change of occupation subsequent to the act of bankruptcy ineffective, and is usually applied in those cases where the debtor was engaged in the same occupation both at the time the debts were incurred and at the time the alleged act of bankruptcy was committed. *In re Disney, supra; In re Luchhardt, supra; In re Mackey* (1901, D. Del.) 110 Fed. 355. But under certain circumstances even this rule, although applied in the majority of cases, operates unjustly, and some courts apply a third test. Thus, if a debtor changes from a non-exempt to an exempt occupation immediately prior to the act of bankruptcy, his occupation at the time when his debts are incurred controls. *In re Burgin* (1909, N. D. Ala.) 173 Fed. 726; *In re Wakefield* (1910, N. D. Calif.) 182 Fed. 247; *Tiffany v. La Plume Condensed Milk Co.* (1905, M. D. Pa.) 141 Fed. 444. The theory of this rule is that the debtor should be estopped from setting up an exemption assumed with the intent of defrauding his creditors, and it has been properly limited to those cases where fraud or wrongful intent exist. In the instant case, therefore, where there was no evidence of fraud on which to base an estoppel, the court correctly adopted the more general and practical rule that the date of the act of bankruptcy is decisive.

CONSTITUTIONAL LAW—FREEDOM OF SPEECH AND OF THE PRESS—CENSORSHIP OF "CURRENT EVENT" MOTION PICTURES.—The plaintiff, the producer of "Pathé News," a motion picture depicting current events, attacked the constitutionality of a New York statute (N. Y. Laws, 1921, ch. 715) which provides for the censorship of all films to be exhibited in the State of New York. Application was made for a declaratory judgment under the Civil Practice Act, N. Y. C. P. A. ch. 546. *Held,* that the statute was constitutional, and that it applied to current event films. *Pathé Exchange, Inc. v. Cobb* (1922) 202 App. Div. 450, 195 N. Y. Supp. 661.

The freedom to write and publish on all subjects, which is guaranteed by the state and federal constitutions, has generally been limited only by a liability for its abuse. *Respublica v. Oswald* (1788, U. S.) 1 Dall. 317; *Bee Publishing Co. v. State* (1921, Neb.) 185 N. W. 339. The courts have frequently refused to grant injunctions forbidding the publication of libellous statements. *Brandreth v. Lance* (1839, N. Y.) 8 Paige, 23; Pound, *Equitable Relief against Defamation and Injuries to Personality* (1916) 29 HARV. L. REV. 640, 648. The Supreme Court has, since the World War, shown a greater tendency to permit restriction on the freedom of speech and of the press. *Abrams v. United States* (1919) 250 U. S. 616, 40 Sup. Ct. 17; *United States v. Burleson* (1921) 255 U. S. 407,